IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.14262 of 2007

1. Jagar Nath Prasad Sahu @ Jagarnath Sah,S/o Late Rameshwar Sah
2. Naresh Sah @ Naresh Kumar S/o Jagar Nath Sah

Both residents of Village- Kokilwara Purbi Tola,
P.S.-Aurai,District Muzaffarpur.

----- ----- ----- Petitioners.

---Versus---

The State of Bihar ---- ---- ---- Opposite Party

For the petitioners : M/S Baxi S.R.P.Sinha, Sr.Advocate and Ashok Kumar Sharma , Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.

O R D E R

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Two of the F.I.R. named accused of Aurai P.S.Case no.93 of 2005, giving rise to Sessions Trial No.887 of 2005, have prayed for the quashing of the order dated 11.12.2006 passed in the Sessions Trial by the learned Presiding Judge, Fast Tract Court No.V, Muzaffarpur , whereby he has rejected the petition under Section 227 Cr.P.C. for their discharge.

The prosecution case based on the written report submitted by one Sudhir Shahi on 2.8.2005 is to the effect that on the preceding night at about 8 P.M. petitioner no.1 came to the house of the informant and called his brother Ram Padarath Shahi for curing his child by witchcraft (***Jhar-phook***) which was protested to by the informant and other family members but eventually petitioner no.1 took away Ram Padarath .

On the following morning at about 4 P.M. when the informant began to search for his brother, he came to learn that the petitioner along with his wife and son Naresh Sah had committed the murder of Ram Padarath and having tied his hands and feet had dumped the dead body in front of their residence.

On the basis of the written report Aurai P.S.Case no.93 of 2005 was registered under Sections 302/34 I.P.C. against the accused persons including the petitioners.

It has been submitted on behalf of the petitioners that the factual position is that the deceased Ram Padarath with 10-12 unknown others was committing dacoity in the house of the petitioners at about 8 P.M. in the night of 1.8.2005 while Chandra Prabha Devi (wife of petitioner no.1) and her mother-in-law were sleeping . It has further been submitted that even as the dacoits attacked Chandra Prabha Devi, she caught hold of the testicles of Ram Padarath, as a result whereof he fell on the ground unconscious. Thereafter, she tied his hands and feet and assaulted him with a iron rod as a consequence whereof he died. It is further submitted that thereafter Chandra Prabha informed her husband (Petitioner no.1) who had gone to village-Sersev in Madhubani district in connection with ***Shradh*** ceremony of a relative. Accordingly, Chandra Prabha submitted a written report to the Officer Incharge of Aurai Police Station and on the basis thereof Aurai P.S.Case no.92 of 2005 under Section 395 and 397 I.P.C. was registered.

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The learned counsel for the petitioners further submitted that the instant case as also Aurai P.S. Case no.92 of 2005 were jointly

investigated and jointly supervised by all the superior police officials and they all have ruled out the involvement of the petitioners in the light of the evidence collected in course of investigation. It will not be out of place to mention here that the local Mukhiya of Village Sersev had testified to the fact that the petitioners had attended the ***Shradh*** ceremony of their relative on the relevant date and time.

On the aforesaid premise, it was sought to be submitted that the rejection of the petition under Section 227 Cr.P.C. by the court below was definitely unwarranted and an abuse of the process of the court.

The fact that both the petitioners had gone out of town to village-Sersev in Madhubani district is definitely their alibi that has been set up by the petitioners which cannot be looked into by the High Court while exercising powers under Section 482 Cr.P.C. .

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That apart, the postmortem report completely falsifies the defence case that has been set up by the petitioners herein of Ram Padaradh committing dacoity in the house of the petitioners and being assaulted to death since the post-mortem report discloses the death of Ram Padarath by strangulation after assault. Even otherwise the accused has made up a case of Chandra Prabha and others killing Ram Padarath during the alleged dacoity.

In the aforesaid circumstances, I find no apparent illegality in the impugned order. There is also no merit in the application which is dismissed.

However, in the interest of justice I direct that this case along with its counter version be tried by the same court. The learned Sessions

Judge, Muzaffarpur, is directed to look into the matter and pass appropriate orders in the light of the observations made above.

(Abhijit Sinha, J)

Patna High Court,Patna
Dated : the 30th September,2008
Nawal Kishore Singh/ A.F.R.

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